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Office of The Attorney General
State of Connecticut

October 28, 2008

The Honorable Nancy Wyman
Comptroller
Office of the Comptroller
55 Elm Street
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Dear Ms. Wyman:

This is a formal legal opinion in response to several questions that you raised concerning the ramifications of the Connecticut Supreme Court's ruling in Kerrigan v. Commissioner of Public Health, S.C. 17716, which will be officially released on October 28, 2008. In Kerrigan, the Court ruled that Connecticut's laws limiting marriage to opposite sex couples violate the equal protection provisions of the state constitution and that "same sex couples cannot be denied the freedom to marry." In light of this decision, you have asked:

(1) Whether same sex couples may continue to enter into civil unions pursuant Conn. Gen. Stat. §§ 46b-38aa to 46b-38pp and receive all the rights and benefits of marriage under state law notwithstanding the fact that the Kerrigan decision grants such couples the right to marry?

(2) Whether same sex couples who have entered into civil unions, and are receiving health, pension, life insurance and other benefits based on their civil union status will continue to be eligible for those benefits after the Kerrigan decision takes effect?

(3) Whether, for the purpose of providing state benefits to same sex couples, the State of Connecticut will recognize the validity of out-of-state same sex marriages and out-of-state civil unions?

(4) Whether a same sex couple who is currently in a civil union may be married without dissolving their civil union?

We conclude that the Kerrigan decision does not alter the status of existing civil unions in Connecticut and same sex couples may continue to enter into civil unions, unless the legislature changes current law. Same sex couples united in civil unions continue to be entitled to all the rights and benefits of marriage under state law, including state employee benefits. We further conclude that once the Kerrigan decision takes effect, the State of Connecticut, under the Full Faith and Credit Clause of the United States Constitution, will recognize both same sex marriages and same sex civil unions from other states because both types of unions will be consistent with the public policy of this State. As to whether same sex couples who are currently in civil unions must dissolve their civil unions prior to being married to each other, there is nothing in Connecticut law that currently requires such action A same sex couple may be married without any action changing their civil union status under current statutes.

Turning to your first question, you ask whether same sex couples may continue to enter into civil unions pursuant to Conn. Gen. Stat. §§ 46b-38aa to 46b-38pp and receive all the rights and benefits of marriage under state law, notwithstanding that Kerrigan grants such couples the right to marry. In footnote 84 of its decision, the Kerrigan majority explicitly addressed this issue when it noted that:

> [T]his case only addresses the state's prohibition against same sex marriage, a ban that we conclude violates the state constitution. **Our holding does not affect the recognition of civil unions in this state.**

Kerrigan, ___ Conn. at ___ n. 84 (emphasis added). Accordingly, we conclude that civil unions continue to be available to same sex couples pursuant to Conn. Gen. Stat. §§ 46b-38aa to 46b-38pp even after Kerrigan takes effect, absent statutory change by the General Assembly.

In your second question you ask whether same sex couples who have entered into civil unions, and are receiving health, pension, life insurance and other benefits based on their civil union status, will continue to be eligible for those benefits after the Kerrigan decision takes effect. The answer to this question is yes. Because Kerrigan does not alter the validity or status of civil unions, couples in civil unions will continue to be entitled to all the rights and benefits of marriage as a result of those unions even after Kerrigan takes effect.

Your third question asks whether Connecticut courts will continue to recognize the validity of out of state civil unions and, in addition, will now recognize out of state same sex marriages. In a formal opinion dated September 20, 2005, we considered whether Connecticut courts would recognize out of state same sex unions. See Conn. Op. Atty Gen. 2005-024; 2005 Conn AG Lexis 23 (Sept. 20, 2005). We concluded that pursuant to the Full Faith and Credit Clause of the U.S. Constitution, U.S. Const., Art. 4, § 1, Connecticut courts would likely recognize out of state same sex unions that did not violate Connecticut's own public policy. Id. As of October 1, 2005, Connecticut's public policy, as set forth in Conn. Gen. Stat. § 46b-38aa et seq. supported civil unions. We opined that Connecticut courts therefore would likely recognize same sex civil unions entered into in other states. Because Connecticut's legislatively expressed public policy at that time did not permit same sex marriages within this State, we opined that such unions would not be recognized. As a result of Kerrigan, the State's public policy is that same sex marriages are valid. Under the Full Faith and Credit Clause the state now must recognize out of state valid civil unions and out of state valid same sex marriages.

Your final question asks whether a same sex couple must dissolve their civil union prior to entering into a same sex marriage with each other. Conn. Gen. Stat. § 46b-38bb prohibits an individual from entering into a civil union if he or she is already married, but there is no prohibition to marriage when an individual is already a party to a civil union. See Conn. Gen. Stat. §§ 53-190 and 46b-20 et seq.[1] Accordingly, we conclude that unless the legislature changes the statutes, there is no law that requires a same sex couple to dissolve their civil union prior to marriage to each other.

[1] One other state that has faced this issue is California. On May 15, 2008, the California Supreme Court ruled in In re Marriage Cases, 43 Cal. 4th 757, 183 P.3d 384, 76 Cal. Rptr. 3d 683 (2008), that California's statutes denying marriage to same sex couples violated the California constitution. Prior to the issuance of In re Marriage Cases, California prohibited same sex couples from marrying, but permitted them to enter into domestic partnerships with the rights and benefits of marriage. Under current California law, a party to a domestic partnership may not enter another domestic partnership or a marriage *with someone other than their registered domestic partner* unless they have dissolved their existing domestic partnership. See Cal. Fam. Code § 298.5(c). California law does not require, however, that the parties to a domestic partnership dissolve their domestic partnership before getting married to each other.

We trust that the foregoing addresses your concerns.

Very truly yours,

RICHARD BLUMENTHAL
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